

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN RE:	)	Case No. 09-42348
	)	
ALTRA NEBRASKA, LLC,	)	Chapter 11
	)	
Debtor.	)	
	)	
	)	
	)	

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**DEBTOR'S MOTION FOR DISTRIBUTION OF SALE PROCEEDS**

Altra Nebraska, LLC, a Delaware limited liability company, the debtor and debtor in possession in the above case (the "Debtor"), hereby moves this Court for an order authorizing it to distribute the proceeds of the sale of its assets conducted on October 28, 2009, and in support therefore hereby states as follows:

1. Debtor filed its voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code on August 13, 2009 (the "Petition Date"), and has remained in possession of its assets and has continued to operate its business pursuant to 11 U.S.C. §§ 1107 and 1108.

2. There has been no trustee or examiner appointed in the case.

3. On September 9, 2009, this Court entered its order granting Debtor's motion under Sections 105(a) and 363 of the Bankruptcy Code to approve the advertisement, marketing and sale of all of the Debtor's assets free and clear of all liens, claims and interests; granting the application to employ and obtain Maas Companies, Inc., as sales agent and auctioneer for debtor and debtor in possession ("Sale Order").

4. On October 28, 2009, the Debtor conducted the sale of all of its assets pursuant to an auction held by Maas Companies, Inc. ("Maas") as approved by the Sale Order. Maas and/or the Debtor deposited with the Court the sale proceeds plus the buyer's premiums due to Maas as its commission for conducting the sale.

5. On January 28, 2009, the Debtor filed a report (the “Report”) of that auction with this Court (Filing No. 161). As noted in the Report, the Debtor initially received sale proceeds and the buyer’s premiums totaling \$7,107,682.89 which are being held in the segregated sales proceeds account located at First National Bank of Omaha, account no. 110290425 (the “Distributable Sale Proceeds”).

6. Various secured parties have asserted competing claims to the Distributable Sale Proceeds and their respective claims were as of the Petition Date the subject of that certain litigation that was originally pending in the Thayer County Nebraska District Court located at Case No. CI 08-104, captioned Starostka Group Unlimited, Inc., et al. v. Advanced Consulting Engineering Services, Inc., et al. (the “State Court Litigation”).

7. On October 16, 2009, the Debtor removed the State Court Litigation to this Court. On January 14, 2010, this Court entered its order remanding the State Court Litigation to the Thayer County Nebraska District Court, and the transfer of the case to the Thayer County Nebraska District Court has occurred.

8. The Thayer County Treasurer held a perfected first priority claim for real estate taxes against the property of \$388,784.70 with interest from and after August 14, 2009 at the rate of \$78.77 per day and January 11, 2010 filed a motion for distribution of a sufficient amount of the Distributable Sale Proceeds to pay this claim in full (Doc. No. 156). On February 5, 2010, the Court entered an order granting the motion. The order became final on February 15, 2010 and the Debtor has paid the claim as ordered by the Court from the Distributable Sale Proceeds.

9. On February 4, 2010, Debtor wired Maas the buyer’s premiums in the amount of \$611,442.31, which was due to Maas as its sales commission under the contract approved by the Sale Order from the Distributable Sale Proceeds.

10. Similarly, on September 11, 2009 this Court entered the final order authorizing the Debtor to obtain postpetition secured financing (the “DIP Loan”). Pursuant to the terms of that order, the Fourth Third, LLC was granted a first priority priming lien on the assets of the Debtor and the Distributable Sale Proceeds sufficient to cover the advances made pursuant to the terms of the DIP Loan together with its reasonable attorneys fees and costs.

11. In addition to Fourth Third LLC’s right to payment pursuant to the terms of the DIP Loan, the Debtor’s counsel McGrath North Mullin & Kratz, PC LLO (McGrath North) received a carve out and was entitled to payment of the fees due it for its work in connection with the administration of the case as approved by the Court. As of the date of this motion, McGrath North has received approval but not payment of the attorneys fees and expenses approved in its second interim, third interim, fourth interim and fifth interim and final fee application including holdback through the fifth interim and final fee application of \$60,556.72 incurred to represent the Debtor through December 28, 2009. As of the date of this Motion the above amount of approved attorneys fees and expenses remain unpaid and due and owing from the Debtor. In addition, Debtor has incurred fees since December 28, 2009, and will continue to incur additional attorneys fees and expenses after this Motion to conclude the case.

12. By this motion the Debtor requests approval to distribute the remaining Distributable Sale Proceeds as follows:

(a) Payment to Fourth Third, LLC of the following amounts advanced pursuant to the terms of the DIP Loan, together with Fourth Third, LLC’s reasonable attorneys fees and costs as allowed pursuant to the terms of the DIP Loan as itemized below:

Principal amount due Fourth Third, LLC	\$425,133.71
Interest due Fourth Third, LLC through and including February 28, 2010	\$10,942.68
Attorneys fees due Fourth Third, LLC	\$16,650.33
Total Principal Due Fourth Third LLC on DIP Loan as of February 28, 2010	\$452,726.72
Per Diem Interest due Fourth Third LLC from and after March 1, 2010	\$85.62

(b) Payment of the professional fees and expenses due to McGrath North Mullin & Kratz, PC LLO approved through December 28, 2009 (covering the second interim, third interim, fourth interim and interim and final application) in the amount of \$60,556.72, all of which have been approved on an interim and final basis pursuant to the orders granting its prior interim and final applications for compensation filed prior to this Motion. In addition, the Debtor requests that \$10,000.00 be retained in the segregated account pending completion of this case to cover the fees and expenses of Debtor's counsel incurred by Debtor since December 28, 2009, which are necessary to obtain approval to distribute the proceeds as provided herein and conclude the case, provided payment thereof shall be subject to this Court's approval upon submission of an appropriate motion for interim and/or final approval of the same.

(c) The Debtor requests that the balance of the Distributable Sale Proceeds be distributed to the Thayer County Nebraska District Court Clerk, to be distributed pursuant to further order by that court.

13. Following the distributions requested herein the Debtor, through counsel, intends to finalize any necessary final report, and move for dismissal and closure of this case.

WHEREFORE, Altra Nebraska, LLC, debtor and debtor in possession prays that this Court approve the distributions requested herein and grant such other and further relief as it should deem just and equitable.

**DATED:** March 18, 2010.

Respectfully submitted,

**ALTRA NEBRASKA, L.L.C., Debtor**

By: /s/ James J. Niemeier  
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ATTORNEYS FOR DEBTOR

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> day of March, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification to all parties registered to receive such filings. I also hereby certify that copies of the foregoing were served via United States mail, first-class postage prepaid, to the following consisting of all remaining parties in the creditors matrix:

Aqua Plumbing & Heating  
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Advanced Consulting Engineering Services  
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West Point, NE 68788

Interstates Engineering, Inc.  
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Sioux Center, IA 51250

IDC Architects  
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Wichita, KS 67220

Harrington Properties, Inc.  
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Stephens & Smith Construction Co., Inc.  
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Lincoln, NE 68502

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Altra, Inc.  
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DCR Construction, Inc.  
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1517 North Point, Ste. 313  
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Altra Biofuels Marketing, LLC  
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Des Moines, IA 50322

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Kayl Heating & Air Inc.  
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/s/ James J. Niemeier

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